

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 10 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ALFREDO SEPULVEDA-IRIBE,

Defendant-Appellant.

No. 05-50330

D.C. No. CR-04-01640
(MJL)

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
M. James Lorenz, District Judge, Presiding

Submitted July 27, 2006**
Pasadena, California

Before: JOHN R. GIBSON,*** RYMER, and CLIFTON, Circuit Judges.

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

***The Honorable John R. Gibson, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, sitting by designation.

Alfredo Sepulveda-Irbe appeals his conviction and sentence of 48 months' imprisonment after pleading guilty to one misdemeanor count and two felony counts of illegal entry in violation of 8 U.S.C. § 1325, arguing that the district court erred by denying his motion to withdraw his guilty plea. However, because this Court "lack[s] jurisdiction to entertain appeals where there was a valid and enforceable waiver of the right to appeal," United States v. Jeronimo, 398 F.3d 1149, 1152-53 (9th Cir.), cert. denied, 126 S. Ct. 198 (2005), the appeal must be dismissed.

A defendant's waiver of appellate rights is enforceable so long as: (1) the waiver encompasses his right to appeal on the ground raised and (2) the waiver is knowingly and voluntarily made. United States v. Joyce, 357 F.3d 921, 922 (9th Cir. 2004). Here, the plain and unambiguous language of the plea agreement provides for a waiver of "any right to appeal or to collaterally attack the guilty plea." Such a comprehensive waiver of appellate rights encompasses the direct appeal of the denial of Sepulveda-Irbe's motion to withdraw his guilty plea. Jeronimo, 398 F.3d at 1154; United States v. Nunez, 223 F.3d 956, 958 (9th Cir. 2000); United States v. Martinez, 143 F.3d 1266, 1270-71 (9th Cir. 1998). Likewise, the waiver was knowing and voluntary, since the guilty plea was taken in compliance with Rule 11 and the record reveals no "misrepresentation or gross mischaracterization by counsel" that tainted the plea. Jeronimo, 398 F.3d at 1157 n.5. Accordingly, Sepulveda-Irbe's waiver bars his

appeal.

DISMISSED.